

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL

Case No.	2:21-cv-04532-SVW-MRW	Date	August 16, 2021
Title	<i>AAEON Electronics, Inc. v. NEC Display Solutions of America, Inc.</i>		

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings: ORDER GRANTING [11] MOTION TO TRANSFER.

Before the Court is a motion to transfer filed by NEC Display Solutions of America ("Defendant"). Dkt. 11. Plaintiff AAEON Electronics, Inc. opposes the motion.

The Court concludes that the motion should be granted. "[F]orum-selection clauses are presumptively valid [and] should be honored 'absent some compelling and countervailing reason.'" *Murphy v. Schneider Nat'l Inc.*, 362 F.3d 1133, 1140 (9th Cir. 2004) (quoting *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12 (1972)). A motion to transfer under 28 U.S.C. §1404(a) is the "mechanism for enforcement of forum-selection clauses that point to a particular federal district." *Atl. Marine Const. Co., Inc. v. U.S. Dist. Court for W. Dist. of Tex.*, 571 U.S. 49, 59 (2013).

Here, there is an enforceable forum selection clause. In 2016, the parties entered into a purchase agreement that "appl[ies] to any purchase by [Defendant] of material, items, products, components or services" sold by Plaintiff. Dkt. 11-1, Ex. A. The purchase agreement provides "the exclusive terms and conditions applicable to the purchase of [material, items, products, components or services] by [Defendant] from [Plaintiff]." *Id.* Moreover, the purchase agreement expressly states that "[t]erms and conditions different from or in addition to those set forth herein, including contained in [Plaintiff's] acknowledgment form, shall not be binding upon [Defendant] unless specifically consented to in writing by [Plaintiff]." *Id.* Accordingly, the Northern District of Illinois is the proper forum for this case unless Defendant specifically consented to having a different forum govern a particular purchase.

Initials of Preparer

PMc

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:21-cv-04532-SVW-MRW	Date	August 16, 2021
Title	<i>AAEON Electronics, Inc. v. NEC Display Solutions of America, Inc.</i>		

Plaintiffs argue that the terms and conditions attached to Plaintiff's 2019 quote includes a New Jersey forum selection clause and, accordingly, that quote overrides the purchase agreement. The Court disagrees. Accepting a form purchase order or quote does not constitute "specifically consent[ing] *in writing*" to all terms contained in that agreement that are different from the purchase agreement. Indeed, Defendants' purchase order does not *specifically consent* to all terms in the 2019 quote. Rather, it accepts "pricing" and "NCNR" (*i.e.*, non-cancellable and non-refundable) per the quote. Thus, even if an acceptance of a quote could constitute a "writing," there is no specific consent to the New Jersey forum in the acceptance.

Accordingly, the forum selection clause here is enforceable.

Where there is an enforceable forum selection clause, it will be enforced unless one of the following three apply: (1) if the inclusion of the clause in the agreement was the product of fraud or overreaching; (2) if the party wishing to repudiate the clause would effectively be deprived of his day in court were the clause enforced; and (3) if enforcement would contravene a strong public policy of the forum in which suit is brought." *Richards v. Lloyd's of London*, 135 F.3d 1289, 1294 (9th Cir. 1998).

The Court concludes that none of those three apply. Moreover, even assuming *arguendo* that the traditional factors for transfer pursuant to 28 U.S.C. § 1404(a) are relevant, the forum selection clause still warrants transfer.

For the foregoing reasons, the motion to transfer is GRANTED. The case is transferred to the Northern District of Illinois.

IT IS SO ORDERED.

Initials of Preparer

PMC